NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 359 of 2017

Order reserved on : 05/09/2019

Order Delivered on : 04/12/2019

- K.P. Dewangan S/o Shri K.R. Dewangan, aged about 43 years, Joint Director, District Jashpur (C.G.)

----Applicant

Versus

- State of Chhattisgarh Through : State Economic Offence Cell and Anti Corruption Bureau, District Raipur (C.G.)

---- Respondent

For Applicant	:	Shri Anup Majumdar, Advocate
For Respondent/State	:	Shri Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

C A V Order

04/12/2019

1. The applicant has preferred the instant revision against the order dated 23.02.2017 passed by the Special Judge (Prevention of Corruption Act), North Bastar, Kanker, in Special Sessions Case No.02/2016, whereby the learned Special Judge framed charges against applicant under Sections 420, 467, 468m 471, 120-B/34 IPC and Sections 13 (1) d & 12 (2) of the Prevention of Corruption Act (for short 'the P.C. Act').

02. Brief facts of the case are that, in the year 2006-2007,

Zila Panchayat, Kanker carried out an exercise to appoint Shiksha Karmi Grade-II and III in the Panchayat Schools under its jurisdiction. The members of selection and scrutiny committee conspired with some candidates who were not in possession of required genuine documents, experience certificate on the basis of which they claimed their candidature for appointment as Shiksha Karmi and whole appointment was an outcome of mass corruption between the officers of Panchayat Department and the candidates. On being complained, the investigation was undertaken by the Economic Offence Bureau and after having been found sufficient material, registered an FIR against the accused persons including the present applicant. After completion of usual investigation, charge sheet was filed. The learned trial Court, after hearing the applicant and other co-accused persons, framed charges against the applicant under Sections 420, 467, 468, 471, 120(B), 34 IPC and Sections 13(1)(d) & 13 (b) of the P.C. Act. Hence, the present revision by the applicant against framing of charges.

03. Learned counsel for the applicant submits that the framing of charges is contrary to the facts and circumstances of the case and the evidence available on record as no appointment has been continued as and when the defective documents were discovered and as such charges against the applicant under Sections 420, 467, 468, 471, 120(b), 34 of IPC and Sections 13(1)(d) and Section 13(b) of the P.C. Act is not

made out against the applicant. He further submits that the FIR in Crime No.51/2009 by the State Economic Offence Investigation & Anti Corruption Bureau does not disclose or prima-facie show any offence to be made out against the applicant. He also submits that the applicant was Chairman of the Selection Committee and as soon as the forgery was brought into the knowledge of the applicant, he inquired all the documents and when the documents, which found to be forged or concocted, the same were cross checked from the issuing authority. Thus, it cannot be said that the applicant conspired with a common intention to misuse his authority for making illegal appointment. It is next submitted that the scrutiny committee verified the documents, certificate and declaration given by the candidates and the applicant was not a member of scrutiny committee. If there is any mistake during verification of documents, the same is on the part of the scrutiny committee and not on the applicant. There is no allegation against the applicant that he awarded marks to a favourite candidate contrary to the rules. The petitioner, who was the Chairman of the selection committee, merely proceeded on the basis of documents and reports placed by the scrutiny committee. It is next submitted that the selection of wrong candidates cannot be termed as irregularities to such an extent so as to constitute crime in all the cases. There is no incriminating material in the FIR to show that the applicant misused his authority by conspiring with any of the Shiksha

Karmi to clear their favoured candidates in order to grant appointment, on contrary, the applicant was very much prompt to issue notice of termination to the illegal appointees and initiate criminal action against the wrong doers.

It is further submitted that the applicant deputed co-accused Leos Kujur, who was posted as Additional Chief Executive Officer, Zila Panchayat, Kanker as in-charge to conduct the scrutiny of documents and further selection process. A committee was also constituted to conduct scrutiny of documents. Other staff members were also deputed to perform the scrutiny and other process of recruitment. The applicant only attended the meeting of selection committee which finally issued selection list along with other representatives of Zila Panchayat, on the basis of marks and scrutiny done by the committee. It is also contended by learned counsel for the applicant that after cancellation of the appointment, Shiksha Karmis had preferred a writ petition before this High Court, which was defended by the office of Zila Panchayat, Kanker in which co-accused Leos Kujur, Additional Chief Executive Officer, Zila Panchayat, Kanker was in-charge. All the documents pertaining to the appointments, selection and termination were within the possession of co-accused Leos Kujur and, therefore, he is responsible for proper custody of the same. He further submits that the investigating authorities have exonerated the President, Zila Panchayat, Kanker, who happens to be the member of Selection Committee. The applicant also stands on similar footing and, therefore, he cannot be charged for the alleged offences and as such the impugned order deserves to be set aside and the applicant may be discharged from the offence levelled against him.

04. Learned counsel for State supported the impugned order passed by the trial Court. He submits that the Court below having considered the material on record prima-facie found involvement of the applicant and framed charges against him.

05. Heard learned counsel for the parties and perused the material on record.

06. As with regard to much highlighted grievance of the applicant that since he was not the member of the Scrutiny Committee of documents and had deputed co-accused Leos Kujur, Additional Chief Executive officer, Zila panchayat, Kaner as in-charge to conduct the scrutiny of documents and further selection process, it is Leos Kujur, who ought to have been held responsible for scrutiny and verification of documents, this Court must make it clear that at the stage of framing of charges, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on records at the trial.

07. While considering the issue of framing of charge, in

Sajjan Kumar V. C.B.I.[1], Hon'ble the Apex Court held that "*at the time of framing of charges, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be"*. Hon'ble the Supreme Court in the matter of ***Om Wati (Smt) and Another V. State, Through Delhi Admn. And Others[2],*** *has held in para 10 as under:-*

> "10. A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. V. Anil Kumar Bhunja [(1979), 4 SCC 274] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considrations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof

1 (2010) 9 SCC 368
2 (2001) 4 SCC 333

and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in Ramesh Singh and Anil Kumar Bhunja cases this Court again in Satish Mehra v. Delhi Admn.[(1996) 9 SCC 766] reiterated ; (SCC pp.769-70, para 9).

“9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:

'227. *Discharge*- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

08. Again, Hon'ble the Supreme Court has held in the matter of **Munna Devi Vs. State of Rajasthan and Another**[3] that *"revisional powers cannot be exercised in a routine and casual manner. Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR. In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to do. On facts, it was premature for the High Court to have exercised its revisional powers. Trial court to conduct trial and dispose of the matter on merits"*.

09. From perusal of the documents and record, in particular the final report, it is evident that the applicant was posted as Chief Executive Officer, Zila Panchayat, Kanker from 20.05.2006 to 23.06.2007, he was the Chairman of Selection Committee, and at the relevant period, the whole process of selection of Shiksha Karmi was carried out under his active supervision. The learned trial Court, however, considering the

3 (2001) 9 SCC 631

documents on record opined;

> "…..that the present applicant and other co-accused raising allegation against each other stated that no offence is made out against them and the grounds raised in the written argument are the subject matter of all the evidence on which it is not possible to consider the same at the stage of framing of charges. Whereas, according to the material collected in the case, there appears sufficient ground against the applicant for framing of charges. In such a situation, his request for discharging him of the charges is not acceptable at this stage."

10. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether prima-facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at the stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any. This Court does not find any illegality or infirmity in the order impugned warranting interference.

11. In view of the aforesaid discussion and in view of judgments of Hon'ble the Apex Court in the matters of **Sajjan Kumar** (Supra), **Om Wati** (Supra) and **Munna Devi** (supra)**,** the revision is liable to and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE

Pekde